IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2455 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATWARLAL BHALABHAI VEGADA SON OF BHALABHAI KALA - Petitioner(s)
Versus
DIVISIONAL MANAGER & 1 - Respondent(s)

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Appearance :
MR KRISHNA G PILLAI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MRS KRISHNA G RAWAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 11/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Petitioner Shri Natwarlal Bhalabhai Gegada, belonging to Scheduled Caste of Vankar, has filed this petition and prayed that the impugned communication be quashed and set aside and the respondents be directed to grant life time family pension to the petitioner as per the provision of the Western Railway (Pension) Rules, 1993.

Petitioner has stated on oath, in this petition, that he is totally a blind man of 46 years and because of his blindness he could not marry. His father Bhala Kala was an employee of the Railways, who retired from service on 29.2.1988 and expired on 14.10.2003. His mother died on 31.1.1981. Since then he was looked after by his father. Thus, he was fully dependent on his father. On the death of his father the petitioner had applied for family pension, but by letter dated 15.11.2005 (ANNEXURE:A), on behalf of the DRM (E)BV, the Divisional Secretary, WRMS/BVP was informed that the petitioner was visually handicapped person and that he had taken training in Blind Training Center at Amreli and has also passed 8th Standard and, therefore, reasonable conclusion can be drawn that he was able to earn his livelihood and he can earn his livelihood. Therefore, the requirement under the Pension Rules was not fulfilled, hence he cannot be included in PPO for family pension. Hence, this petition.

On 20.2.2006 the Division Bench of this Court straightway issued Rule on it and ordered to place this matter for final hearing after the pleadings

were completed in view of the fact that the petitioner was physically handicapped and deprived of pension. The pleadings have been completed and the matter was, on earlier occasion, placed before this Court on 14.7.2006. On 14.7.2006 it was submitted by Shri Pillai for the petitioner that the petitioner is ready and willing to serve Railways if he is appointed in the handicapped quota. Thereupon, he was asked to apply and accordingly the Application was made on 15.7.2006 by Shri Pillai, learned Counsel for the petitioner to the DRM, Bhavnagar. However, by letter dated 25/27.7.2006 his request was rejected on the ground that there was no provision or notification for recruitment of the petitioner against the handicapped quota and that he was 46 years of age and, therefore, he cannot be considered for the employment as per the existing rules. Shri Pillai has placed on record the copy of Application dated 15.7.2006 and the reply dated 25/27.7.2006.

In view of the above reply dated 25/27.7.2006, Shri Pillai has made submission regarding the family pension to be given to the petitioner which was strenuously opposed by learned Counsel Ms. Raval for the respondents.

Ms. Raval tried to place on record the report dated 29.7.2006 and tried to submit that the petitioner has made false statement in the petition on oath that he was unmarried. She submitted that the report shows that he was married and he had one son and one daughter, and maintaining the family by running the telephone booth on Sarkhej – Gandhinagar

Highway. When she tried to tender such report it was vehemently opposed by Shri Pillai for the petitioner on the ground that in the Reply Affidavit filed earlier nothing sort of it was stated by the respondent and with a view to frustrate the claim of the petitioner for the family pension an attempt is made to tender such type of Report which has no authority. He submitted that the averments made in the petition that the petitioner was unmarried and that he was not able to earn his livelihood remained un-controverted. Such Report which was tried to be submitted to this Court by Ms. Raval cannot be taken on record without any Affidavit. Therefore, it can not be taken on record.

Petitioner has clearly stated in his petition that he is 46 years old and unmarried. He lost his mother on 31.1.1981. Since then he was wholly dependent on his father Bhala Kala who retired from service of the respondent Railway on 29.2.1988 and on 14.10.2003 he expired. From the income of pension his late father was maintaining both of them. On his death, being handicapped son, he applied for pension which was denied on flimsy grounds. In paras 5, 8 and 11 of this petition, it is clearly stated that he cannot earn his livelihood and that he has no source of income. He is unemployed and not earning anything to provide for his own food, clothing and medicine, etc. He is on the verge of death due to starvation. He is living on the mercy of his neighbours.

However, in reply Affidavit vague averments have been made that the petitioner can earn his livelihood

from the quota of handicapped. In Para : 6 of the Reply Affidavit it is stated that the petitioner should have tried for appointment in handicapped quota being in a position to earn the livelihood. He is blind, therefore, he could not get any job in private. He was 46 years old, therefore, he was denied appointment in Railway. When he applied for employment he was told that he has crossed 45 years, therefore, cannot be appointed.

It is the case of the respondent that the petitioner is not eligible for life time family pension under Rule : 75(6)(iii)(b) of the Railway Services (Pension) Rules, 1993 (for short “the Rule”). The provision of Rule 75(6)(iii) of the Pension Rules states that if the son or daughter, of a railway servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her, unable to earn a living even after attaining the age of twenty-five years, the family pension shall be payable to such son or daughter subject to the condition that the sanctioning Authority is satisfied that the handicap is of such, prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Officer not below the rank of Divisional Medical Officer setting out, as far as possible the exact mental or physical condition of the person.

In the instant case the petitioner was blind, therefore, visually handicapped. Under rules he was sent to Chief Medical Superintendent of Bhavnagar

Railway Hospital, who had issued the Certificate dated 22.3.2004 that he was visually handicapped with 100% disability. However, on the objection raised by the Accounts Department regarding the earning capacity of the petitioner, the Medical Superintendent issued further Certificate dated 30.9.2005 to the effect that the petitioner cannot earn his livelihood unless he is appointed in handicapped quota.

It is true that the petitioner had studied up to 8th standard and has also taken some training, but the fact remains that because of his total blindness he was not able to get the job anywhere and, therefore, he was maintained by his father till 2003 up to age of 43 years. The medical Certificate issued by the Medical Officer clearly shows that he was unable to earn. What was stated in the certificate was that if he is provided employment in handicapped quota then he can earn and maintain himself. The petitioner was ready and willing to maintain himself by doing any job in Railways. But, when he applied, the Authority was turned down his request on the ground that he was over aged and that there was no provision or notification issued by the Railways to give employment against handicapped quota. Thus, though the petitioner may be in a position to earn his livelihood by doing job in Railways, the hard fact remains that he is unable to earn because of his blindness and because of his age.

Under the circumstances, we are of the considered opinion that the respondents have wrongly

denied the pension to the petitioner that the petitioner is entitled for the family pension from the date of the death of his father.

Accordingly, this petition is allowed and the respondents are directed to grant life time family pension to the petitioner under the Pension Rules, 1993 from the date on which his father Bhala Kala expired i.e. on 14.10.2003. The petitioner shall be paid life time family pension with effect from 1.9.2006 and arrears on or before 30.9.2006. Rule made absolute accordingly with costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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